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NOTE ON INTERNATIONAL PROTECTION

International Protection in Mass Influx

(submitted by the High Commissioner)

I. INTRODUCTION

1. In 1994, the Executive Committee considered the content of international protection and ways in which to extend protection to all who require it. The Executive Committee encouraged the High Commissioner to continue to provide protection to persons unable to return in safety to their countries of origin as a result of situations of conflict. It requested UNHCR to engage in further consultations and discussions concerning measures to achieve this objective, which might encompass the elaboration of guiding principles, including for concerted action (A/AC.96/839, para. 19).

2. Subsequent developments have shown the desirability of giving continued consideration to this issue. At its 26th session in June 1995, the Sub-Committee of the Whole on International Protection reviewed a note on The Scope of International Protection in Mass Influx (EC/1995/SCP/CRP.3), in which UNHCR outlined various aspects relevant to providing international protection to those in need of it in the context of mass influx. UNHCR emphasized, in particular, the need for legal protection of such refugees, and also drew attention to the burden placed particularly on impoverished countries hosting large refugee populations.

3. In the present Note, UNHCR underlines the desirability of global efforts to address this important problem, emphasizing that concerted

approaches call for the full endorsement and participation of States beyond the immediately affected region. Liberal asylum policies which need not presuppose permanent settlement, remain indispensable to any such approach. In addition, international solidarity with, and support for, countries bearing significant burdens as the result of refugee movements, particularly from rapid and large-scale influxes, is emphasized. Both factors are fundamental to a solution-oriented approach to situations of mass forced population movements, which often result from conflict. Closely related to these concerns are two major issues which have continued to preoccupy UNHCR in 1995, namely the establishment of conditions within countries of origin needed to support safe and lasting repatriation, and the protection of internally displaced populations.

II. CURRENT DEVELOPMENTS

4. In 1995, a number of political and human rights factors highlighted the increased complexity and dimensions of refugee protection. Gross human rights violations by a number of States or non-state entities pursuing policies of "ethnic cleansing" in different regions continued to give rise to pressing protection concerns. More positively, efforts were made by the international community to hold accountable those -- including refugees -- responsible for such violations through the important and long-awaited actions of the International Tribunals for former Yugoslavia and Rwanda. At the same time, UNHCR has endeavoured to concretize its declared prevention strategy by undertaking, in close collaboration with the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE), preparations for a regional conference to address current and potential refugee problems and related population movements in the Commonwealth of Independent States (CIS) and relevant neighbouting countries.

5. Events of the past year, whether in the former Yugoslavia, the Great Lakes region of Africa or the former Soviet Union, have illustrated clearly the value of the current international protection regime, and have highlighted some of its shortcomings. In areas of the world most affected by refugee flows, the institution of asylum and basic refugee rights have often been respected, but have at other times suffered mass violations. Many States express a sense of being overburdened by refugee influxes, notwithstanding great differences in the magnitude and impact of the refugee populations which they host. A number have also been unwilling to see refugees become a long-term presence, notably in the case of mass flows. These attitudes have been exacerbated by the fear that the establishment of the necessary conditions for the early resolution of certain refugee situations, particularly through voluntary repatriation, will be difficult to achieve.

6. These troubling protection developments in various parts of the world are not all new. In some cases, however, they are occurring for the first time in States with a long tradition of generous refugee reception and liberal asylum policies, or at heightened levels. Restrictive measures include the erection of physical and legal barriers by States to prevent refugees from obtaining entry or asylum on their territory, forcible mass

return and a failure to meet internationally agreed standards of treatment, leading at times to the maintenance of refugees in limbo. A decline in physical protection is also widely noted. In many instances, considerations of national security have resulted in measures detrimental to the safety and well-being of refugees.

7. In other instances, the fragmentary and undeveloped nature of international responsibility for protection was exposed by the plight of groups of internally displaced persons caught in conflict situations, and of stateless persons without a legal claim on the protection of any Government.

III. EXPLORING PROTECTION STRATEGIES

8. New and complementary strategies to ensure the effective provision of international protection should first seek to reinforce the implementation of the 1951 Convention and 1967 Protocol and existing regional instruments; to strengthen the protection provided to persons falling outside the application of international legal instruments; and to support protection measures taken by States not yet party to such instruments. The objective is to reinforce the commitment of States to ensuring that persons who require protection receive it without discrimination. While various possibilities towards achieving this end can be kept under review, States do not appear prepared currently to undertake additional binding obligations towards refugees. UNHCR will, therefore, continue to promote and encourage the positive regional development of standards in conformity with the international instruments. It may also be appropriate to pursue guiding principles relevant to this objective, including measures which would generate increased international solidarity and support to States most affected by refugee flows.

A. Extending international protection

9. In 1994 the Executive Committee examined the problem of certain inadequacies in the international refugee protection regime, in the light of current refugee flows and their magnitude. UNHCR emphasized that its role in providing international protection primarily involves ensuring that Governments protect refugees and asylum-seekers who may be refugees; thus, the fulfilment of UNHCR's protection mandate requires the active cooperation of Governments, whose political and material support is, of course, crucial. Issues which were identified as meriting ongoing attention in this regard included the non-accession to the basic international legal instruments of refugee protection by a number of States, as well as various restrictions in the interpretation of the refugee definition itself. Other aspects included measures to extend protection to all persons fleeing conflict, whether or not they have been recognized formally as refugees.

10. It was recognized that even when States are not party to the relevant international conventions, they have generally accepted the need to provide protection to refugees fleeing armed conflict and civil strife, whether or not such persons are deemed to fall within the terms of the Convention. This general practice is reflected in the 1994 General Conclusion on International Protection (A/AC.96/839, para. 19(n)), which

encourages the High Commissioner to pursue consultations concerning measures to achieve the objective of ensuring continued protection to such persons. Recognizing that States have often undertaken such protection as a humanitarian responsibility, without specific reference to international legal obligations, UNHCR considers it desirable to elaborate a clear basis which would enhance the security and predictability of this protection.

11. It is recalled that in many situations, persons fleeing conflict may also be fleeing a well-founded fear of persecution for Convention reasons. This is the case, for example, when a segment of the population is targeted by government or non-government forces due to their ethnic, religious or political affiliation. Persons fleeing or remaining outside a country for reasons pertinent to refugee status qualify as Convention refugees, regardless of whether those grounds have arisen during conflict. Steps towards strengthening the international protection required by all persons fleeing conflict must take this into account to avoid diminishing the protection to which refugees are entitled. Restrictions in the practice of certain States in this context have included the denial of refugee status in cases where persecution emanates from non-state entities, whereas the determining factor in the Convention and UNHCR's Statute is clearly the absence of effective protection, rather than the identity of the perpetrator.

12. Refugee status determination issues such as these are fundamental to UNHCR's mandate, particularly with regard to its supervisory role under Article 35 of the Convention, and to international refugee law. The admission and protection of persons fleeing danger and persecution is still the essential response to refugee flows. UNHCR welcomes proposals by States on measures to strengthen the implementation of international protection responsibilities in this regard, within the appropriate international legal framework.

13. At the same time, while the continued codification of fundamental principles remains important, the mere fact of accession to the relevant instruments has been shown to be insufficient to guarantee a consistent and generous response to refugee needs. There remains a range of underlying factors, whether political, economic or social, which may also influence the response of States to refugee influxes and which may prompt measures which conflict with the basic rights of refugees and asylum-seekers. These factors must also be addressed in any effort to strengthen the international regime.

B. International solidarity

1. In host countries

14. Over recent years, despite the broadening of state involvement with refugee issues, the lack of tangible international solidarity has remained an obstacle to the positive development of the international refugee protection regime. Successive Executive Committee Conclusions, endorsed by the General Assembly, have called for international solidarity and burden-sharing, enjoining all States to take an active part, in collaboration with UNHCR, in efforts to assist countries, in particular those with limited resources, that host large numbers of refugees and asylum-seekers. It remains the shared responsibility of the international community to support the capacity of host

States to receive and protect refugees, including States lacking the necessary resources and those where domestic concerns, including anti-immigrant sentiment as well as social, economic, political and environmental concerns, militate against effective protection. Issues of national security are also increasingly relevant in this respect, particularly in regard to the political and related consequences of a prolonged stay of large groups of refugees.

15. The broad and recurrent consensus on the need for international solidarity in this context can only benefit from reinforcement and better implementation. In particular, there is an urgent need to provide mechanisms to strengthen the national capacities of the most affected States to receive refugees, where this capacity is under strain. In addition, the security implications of mass flows for host States must be acknowledged. An effective international response needs to uphold the fact that the safety of refugee camps and settlements is predicated on their exclusively civilian and humanitarian character, and on the duty of refugees and host authorities to abstain from any activity likely to detract from this. To this end, UNHCR has undertaken exceptional measures to provide security to the Rwandan camps in Zaire, as well as pressing for their movement away from border areas. The Executive Committee has described the maintenance of the civilian and humanitarian nature of refugee camps and settlements as essential, and called on all other States to assist States of refuge in this regard. Any action or omission which facilitates armed activities intended to destabilize Governments is clearly incompatible with this principle.

16. In some situations, refugees and asylum-seekers have fallen victim to racist attacks. At their most basic, measures of international solidarity must include a systematic and public rejection of all manifestations of racial discrimination, including the implication that minority groups, whatever their nationality, have a lesser claim to basic rights and are responsible for various social ills. Concerted action by host States to influence positively public opinion in this domain would be welcome. In addition, it is incumbent on the international community to distinguish carefully between legitimate concerns in respect of illegal immigrants and the abuse of asylum procedures, on the one hand, and long-standing international obligations and positive traditions of providing asylum to refugees, on the other. Any public perception that most asylum-seekers are using asylum procedures to circumvent anti-immigration policies inevitably reinforces xenophobic and racist tendencies, which in their turn are likely to spur further restrictive measures.

17. In an effort to prevent and deter the abuse of asylum procedures by would-be immigrants, considerable and sustained efforts have been undertaken in certain States to restrict access to their territory, and in some cases to limit possibilities for substantive review of refugee claims. In addition, some countries have increasingly restricted the application of the refugee definition contained in the 1951 Convention and 1967 Protocol, as described in paragraph 5 above. UNHCR has consistently stated its concern that anti-immigration measures, when applied indiscriminately to bona fide and abusive asylum-seekers alike, may have an adverse impact on the possibility for persons with a well-founded fear of persecution of obtaining protection. International solidarity is inevitably weakened by the adoption of

restrictive measures in the legal sphere. UNHCR also believes that, provided proper eligibility criteria and adequate procedural safeguards are applied, an asylum procedure equipped to reach prompt decisions combined with a consistent policy to deal with persons who do not require protection is the best way of discouraging abusive asylum claims. UNHCR remains willing to support such resources and believes that a coherent approach in this regard could contribute to rendering certain restrictive measures superfluous.

18. Many low-income developing countries whose resources are already strained face destabilizing social and economic effects from a sudden, mass influx of refugees. Their capacity to absorb this increase in population, often in fragile and remote regions, requires reinforcement through development support geared to both physical and institutional infrastructure. The sectors which are particularly exposed in cases of sudden and large-scale influx include security, water, sanitation, the environment, health, and law enforcement. The Executive Committee has for several years provided guidance on related issues. The 1984 Principles for Action in Developing Countries (A/AC.96/736 refers) stated that projects aimed essentially at repairing or improving a host country's economic or social infrastructure to help it cope with the presence of refugees, but which do not directly benefit significant numbers of refugees should as a rule be handled by UNDP and other developmental organizations, including non-governmental organizations (NGOs). These Principles, and the approach exemplified by the International Conference on Assistance to Refugees in Africa (ICARA), the International Conference on the Situation of Refugees, Repatriants and Displaced Persons in Southern Africa (SARRED) and the International Conference on Central American Refugees (CIREFCA), presupposed local integration and the encouragement of income-generation opportunities for refugees. With few exceptions, however, implementation of refugee aid and development projects has been seriously hampered by lack of funding, and past efforts have rarely addressed the full range of emergency and short-to-medium term inputs needed in the context of mass influxes. A more comprehensive and supportive international approach in this area is overdue, including the full and active involvement of all relevant international agencies and organizations.

19. The Plan of Action adopted in Bujumbura at the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region (February 1995) included a statement of actions expected from the international community, notably in respect of concrete measures to alleviate and redress the impact of the presence of refugees and displaced persons. These measures provide a useful guide to the areas in which international support for mass flows is required. They include such activities as arresting and reversing environmental degradation; rehabilitating schools, roads, water sources and health facilities; encouraging the restoration of normalcy through provision of assistance to destabilized local communities; and assisting host countries in the maintenance of law and order in and around refugee camps.

20. At a broader level, the support of concerned States for political initiatives in pursuit of conflict resolution and to address the security concerns of host States arising from refugee movements, is also often required.

2. In countries of origin

21. Parallel and equally important measures of international solidarity are needed in respect of countries of origin in seeking sustainable solutions to refugee problems as well as in preventing their recurrence. In addition to early warning and prevention activities, this concerns in particular support for voluntary repatriation programmes and broader efforts to effect lasting solutions, including conflict resolution and reconciliation. Last year, the Executive Committee recognized that "for repatriation to be a sustainable and thus truly durable solution to refugee problems it is essential that the need for rehabilitation, reconstruction, and national reconciliation be addressed in a comprehensive and effective manner" (A/AC.96/839, para. (aa)). In certain cases, the management or timing of repatriation may carry the risk of endangering national reconciliation, and there remain, as recognized by the Convention, situations in which the breach of the relationship between the refugee and his or her country is unlikely to heal.

22. The elements of post-conflict reconstruction and recovery have benefited from intense analysis in recent years, with considerable agreement on the need for greater emphasis on reconciliation and measures needed to underpin peace and sustainable reintegration. The establishment of an effective human rights regime, institutions which sustain the rule of law, including an independent judicial system accessible to all and an accountable public administration, are at least as important as the rehabilitation of structures and facilities. The delicate balance between reconciliation and accountability for past abuses means that the parties themselves must take the lead in national reconciliation. There are, however, several areas in which the international community can encourage and support the process.

23. From the outset of a refugee situation, UNHCR bears in mind the possibilities for voluntary repatriation. The Executive Committee has encouraged UNHCR to provide active support for this through the promotion, where feasible, of various initiatives, including the maintenance of contact and efforts to secure dialogue between all the main parties, facilitating communication between them, and acting as an intermediary or channel of communication. Such efforts are also closely linked to the need for refugee camps to retain an exclusively civilian and humanitarian character, and for refugees to abstain from any incompatible activity. Broader international support for efforts to maintain law and order in refugee camps, such as attempted recently in the United Republic of Tanzania and Zaire, may be required in this connection.

24. Related actions may include encouraging the facilitation of visits by refugees to countries of origin and, in the context of information campaigns promoting voluntary repatriation, of representatives of the country of origin to refugee camps. The process can be further strengthened through the provision of appropriate education in refugee camps and settlements. These actions are particularly important in the increasing number of situations where various factors, including the welfare of the refugee population, indicate that large-scale voluntary return must nevertheless be considered, despite the existence of less than optimum conditions in the country of origin. The safety and viability of such operations depends on a

number of factors, including the commitments given by the country of origin, the effectiveness of international monitoring of returnees and proper provision for those who have valid reasons not to return home. It is likely that UNHCR will face an increasing number of such situations in coming years.

25. UNHCR's legitimate concern for the well-being of returnees has long been recognized, and is given effect through monitoring their safe and effective reintegration in the country of origin. UNHCR also routinely assists in the establishment and monitoring of amnesties for returnees, which are a feature of most repatriation agreements. Where applicable, the direct support of United Nations peace-keeping personnel, United Nations human rights monitors and other international and non-governmental organizations is required for the effective monitoring of returnee populations, especially to situations which have not fully stabilized. Concerted international support for these activities and for the essential steps needed for the transformation to long-term reintegration is required if these difficult operations are to succeed.

26. A related area which has previously been the subject of extensive Executive Committee attention, including in 1994, is that relating to the protection of internally displaced persons. Recent events in the former Yugoslavia and in Rwanda, in particular, have again emphasized the need for a clear legal basis for providing this protection and for greater clarity in terms of international and national responsibility for the protection of uprooted civilians in conflict.

IV. CONCLUSION

27. The principles of international protection have been developed and strengthened, over time, by positive state practice. Conversely, actions by States which depart from these basic principles inevitably contribute to their overall erosion. This is particularly so when States traditionally regarded as standard-bearers of refugee protection, even in difficult circumstances, feel unable, for economic, social or political reasons, to maintain their commitments in the face of new needs. Such practices are liable to be noted and even emulated, easily encouraging a general trend of more restrictive responses. In this context UNHCR considers that its role, in cooperation with States, is to seek to uphold the consistent and universal application of the fundamental principles of protection, as part of the international rule of law, without losing sight of regional and local particularities and preoccupations. Generous refugee admission, assistance and integration practices must be complemented by strengthened international support for host States, coupled with more effective preventive action and enhanced international support for safe and dignified repatriation. Agreed guiding principles, in line with the existing international legal regime, can make a valuable contribution to consistency in this regard.

28. Guiding principles for enhanced international action may also usefully reiterate the value of comprehensive and regional approaches to refugee problems, bearing in mind that the Sub-Committee of the Whole on International Protection at its meeting in May 1994 reached broad agreement that complex problems of displacement could best be managed through such

approaches (EC/SCP/87 and EC/SCP/89 refer). UNHCR has been urged further to develop approaches including the basic principles of prevention, protection and solutions on the basis that while these should be targeted to specific situations, they should be based on recognized principles of asylum and protection as laid down in the Convention and Protocol, and in accordance with other human rights standards. The underlying need for sufficient political will among the countries concerned to address critical issues has also been emphasized.

29. A broad range of legal, political, developmental, security and other elements must be addressed in efforts to extend effective international protection to all persons in need of it. The Convention and Protocol, as well as international and regional refugee and human rights instruments, provide a broadly accepted overall framework for this task. The inadequacies which have been identified within this framework could be addressed, in the first instance and as recommended by the Executive Committee, through the further development and consolidation of non-binding standards. UNHCR looks forward to the recommendations of the Executive Committee to advance this process.